

REMARKS

This responds to the Office Action dated November 14, 2008.

Claims 1, 9, 20-23 and 26 are amended, no claims are canceled, and no claims are added. Thus, claims 1-4, 9-16 and 20-35 remain pending in this application. Applicant notes the allowability of claims 12-16 and 27-35. Applicant thanks the Examiner for the detailed Office Action and responds in detail as follows:

§ 103 Rejection of the Claims

Claims 20-26

Claims 20-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinfurter et al. (U.S. 6,035,050; hereinafter "Weinfurter") in view of Watanabe et al. (U.S. 6,148,274; hereinafter "Watanabe"). Applicant has amended claims 20-23 and 26 to better recite the present subject matter. Support for the amendments can be found generally in the specification. Applicant respectfully submits that no new matter is added in making these amendments.

With respect to independent claim 20, Applicant is unable to find in the cited portions of the cited references, among other things, a teaching or suggestion of a hearing aid including a memory having a first population stored therein, the first population comprising a plurality of parent sets, a toggle device for toggling between a plurality of pairs of the plurality of parent sets, each of the plurality of pairs having a first and second set, a select indicator for selecting a preferred one of the first and second set in the each of the plurality of pairs, a genetic algorithm operator for performing one of mutation and crossover on at least one set of the plurality of parent sets thereby producing a child set, a processor for ranking a hierarchy of the plurality of parent sets, and instructions executable by the processor for performing a genetic algorithm for replacing one of the plurality of parent sets in the first population with the child set thereby forming a second population wherein the toggle device toggles between another pair of sets, the another pair being selected from the second population, as recited in claim 20.

With respect to independent claim 21, Applicant is unable to find in the cited portions of the cited references, among other things, a teaching or suggestion of a hearing aid including a

memory having a first population stored therein, the first population comprising a plurality of parent sets, each of the parent sets having at least one parameter, a toggle device for toggling between a plurality of pairs of the plurality of parent sets, each of the plurality of pairs having a first and second set, a select indicator for selecting a preferred one of the first and second set in the each of the plurality of pairs, a genetic algorithm operator for performing one of mutation and crossover on at least one set of the plurality of parent sets thereby producing a child set, a processor for assigning a probability of selection by the select indicator to the plurality of parent sets, and instructions executable by the processor for performing a genetic algorithm for replacing one of the plurality of parent sets in the first population with the child set thereby forming a second population wherein the toggle device toggles between another pair of sets, the another pair being selected from the second population, as recited in claim 21.

With respect to independent claim 22, Applicant is unable to find in the cited portions of the cited references, among other things, a teaching or suggestion of a hearing aid including a memory having a first population stored therein, the first population comprising a plurality of parent sets, each of the parent sets having at least one parameter, a toggle device for toggling between a plurality of pairs of the plurality of parent sets, each of the plurality of pairs having a first and second set, a select indicator for selecting a preferred one of the first and second set in the each of the plurality of pairs, a genetic algorithm operator for performing one of mutation and crossover on at least one set of the plurality of parent sets thereby producing a child set, a genetic algorithm for replacing one of the plurality of parent sets in the first population with the child set thereby forming a second population wherein the toggle device toggles between another pair of sets, the another pair being selected from the second population, and a processor for converging the sets of the plurality of pairs and the another pair to a single solution set, as recited in claim 22.

With respect to independent claim 23, Applicant is unable to find in the cited portions of the cited references, among other things, a teaching or suggestion of a hearing aid including a memory having a first population stored therein, the first population comprising a plurality of parent sets, each of the parent sets having at least one parameter, a toggle device for toggling between a plurality of pairs of the plurality of parent sets, each of the plurality of pairs having a first and second set, a select indicator for selecting a preferred one of the first and second set in

the each of the plurality of pairs, a genetic algorithm operator for performing one of mutation and crossover on at least one set of the plurality of parent sets thereby forming a child set, and a processor for converging the sets of the plurality of pairs and the child set to a single solution set, as recited in claim 23.

Claims 24 and 25 ultimately depend on independent claim 23 and are believed to be in condition for allowance at least for the reasons provided with respect to claim 23.

With respect to independent claim 26, Applicant is unable to find in the cited portions of the cited references, among other things, a teaching or suggestion of a hearing aid including a memory having a first population stored therein, the first population comprising a plurality of parent sets, each of the parent sets having at least one parameter, a toggle device for toggling between a plurality of pairs of the plurality of parent sets, each of the plurality of pairs having a first and second set and a select indicator for selecting a preferred one of the first and second set in the each of the plurality of pairs, wherein the toggle device toggles between the plurality of pairs of the plurality of parent sets, further comprising a processor for converging the plurality of pairs and at least one child set to a single solution set, the at least one child set formed by performing one of mutation and crossover on at least one set of the plurality of parent sets, as recited in claim 26.

Applicant respectfully requests reconsideration and allowance of claims 20-26.

Claims 1-4 and 9-11

Claims 1-4 and 9-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinfurter in view of Watanabe in further view of Holland et al. (U.S. 4,697,242; hereinafter "Holland"). Applicant amended claim 1 to better recite the present subject matter. Support for the amendments can be found generally in the specification. Applicant respectfully submits that no new matter is added in making these amendments.

With respect to independent claim 1, Applicant is unable to find in the cited portions of the cited references, among other things, a teaching or suggestion of an apparatus for fitting a hearing aid by its wearer including a memory adapted to store a first population comprising a plurality of parent sets, a toggle device adapted to toggle between a pair of the plurality of parent

sets, a select indicator for selecting a preferred one set of the pair, a communications link adapted to connect with the hearing aid, and a processor adapted to provide signals to the hearing aid to change operation of the hearing aid based on each parent set, to allow the wearer to select one preferred set for each pair of parent sets, to record a ranking of parent sets, assign probabilities of selection of parent sets, crossover and/or mutate at least one parent set, and replace weakest parent sets with a child set, the processor adapted to perform a genetic algorithm for replacing one of the plurality of parent sets in the first population with the child set thereby forming a second population, as recited in claim 1.

Claims 2-4 and 9-11 depend, either directly or indirectly, on independent claim 1 and are asserted to be in condition for allowance at least for the reasons provided with respect to claim 1. Applicant respectfully requests reconsideration and allowance of claims 1-4 and 9-11.

Allowable Subject Matter

Applicant notes the indication of allowable subject matter of claims 12-16 and 27-35.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.


Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6912

Date

Feb. 17, 2009

By


Timothy E. Bianchi
Reg. No. 39,610

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 17, 2009.

Name

Timothy E. Bianchi

Signature

